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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/245,603 02/05/99 CURIEL

D D6080

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HM22/0813

EXAMINER

PARAS JR, P

ART UNIT

PAPER NUMBER

1632

DATE MAILED:

08/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/245,603

Applicant(s)

CURIEL ET AL.

Examiner

Peter Paras, Jr.

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 July 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- 8/17/01
- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-4, 6-9, 11-12, 16, 18-20, 22 and 23.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

10. ☐ Other: _____

Karen M. Hauda
KAREN M. HAUDA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Continuation of 5. does NOT place the application in condition for allowance because: the claims recite any modification of the HI loop domain of the fiber knob, however the specification is only enabling for two modifications, insertion of a FLAG octapeptide and insertion of an RGD peptide. See Paper No. 7, pages 2-3 and also Paper No. 4, page 3. The specification has discussed the importance of not interrupting the trimerization of the fiber (see pages 6-8). It is unpredictable if insertions of other sequences would allow trimerization of the fiber. See Paper No. 7, page 3 and also Paper No. 4, page 3. The claims are also directed to methods of gene therapy, however the specification has only enabled in vitro methods of gene transfer. Claims 11-12 are directed to methods of gene therapy, although claims 11-12 do not recite gene therapy, as the method steps require in vivo administration of an adenoviral vector comprising a heterologous nucleic acid sequence. The art of gene therapy was unpredictable at the time of filing of the claimed invention and remains unpredictable hereafter. See Paper No. 7, pages 2-5 and also Verma, Eck and Sandhu on pages 3-4 of Paper No. 4. The Examiner maintains that Wickham anticipates claims 1-4, 6-9, 16, 18-20, and 23. The Examiner asserts that Wickham has taught modifications in the HI loop, see column 8, wherein the modifications can be insertion of nucleic acid sequences encoding a CDCRGDCFC or an RGD peptide, see column 9, 27, and SEQ ID NO: 3. Additionally, Wickham has taught an adenoviral vector comprising a nucleic acid sequence encoding HSV-TK. See column 14. Finally, Wickham has taught gene transfer into tumor cells. See column 17.